



# CITY OF PHILADELPHIA

POLICE DEPARTMENT  
HEADQUARTERS, FRANKLIN SQUARE  
PHILADELPHIA, PENNSYLVANIA 19106

JOHN F. TIMONEY  
Commissioner

October 7, 1999

Jane Leslie Dalton, Chair  
Police Advisory Commission  
P.O. Box 58549  
Philadelphia, PA 19102

re: PAC file #95-0192  
Matter of Calvin Butler, Jr.  
Police Officer Michael Kelly

Dear Chairperson Dalton,

I am in receipt of your letter dated August 31, 1999 regarding the above referenced matter. PAC's report recommends that Officer Kelly be found guilty of "neglect of duty" and receive a written reprimand. Your cover letter misstates the report's recommendation as a "suspension for up to five days". Either way, the Police Department declines to accept PAC's recommendation.

The incident underlying Mr. Butler's complaint took place four years ago on October 12, 1995. The Police Department was not provided with the transcripts from PAC's hearings so we could only judge the case by reviewing the Internal Affairs investigation.

On the evening in question, at approximately 1 AM, Police Officer Kelly responded to one of several radio calls related to vehicles chasing each other with possible gunshots fired. Officer Kelly observed one of the suspected vehicles but he could not follow it because he saw what he believed to be a police officer with a crowd of people. Officer Kelly did broadcast the information about the fleeing vehicle but when it was located the operator fled the scene on foot.

Officer Kelly explained in his interview with Internal Affairs that he approached the individuals on the street. The situation was chaotic with several people accusing Mr. Butler of attempting to rob the driver of the vehicle that had left the scene. Mr. Butler's accusers were extremely vocal and it is possible that several of the people present were intoxicated. At the same time, Mr. Butler complained that he was attacked for no apparent reason by individuals who were not present. While Officer Kelly attempted to sort out what had occurred, the presumed off-duty officer left without identifying himself. Officer Kelly interviewed the two other African-American men identified as "witnesses" by PAC. These individuals told Officer Kelly that they did not know what was going on and they did not want to give their names or become involved. Officer Kelly's version is

clearly contrary to PAC's assertion that these two men were eyewitnesses who offered to identify individuals who assaulted Mr. Butler.

Officer Kelly reported to Internal Affairs that he asked Mr. Butler if he could identify the men who attacked him and asked if he wanted to go to the Detective Division for further investigation. Mr. Butler declined and stated he wanted to go home. Mr. Butler also refused Officer Kelly's offer to take him to the hospital for medical treatment. PAC explicitly discredited Officer Kelly's explanation despite the fact that PAC was in possession of the Incident Report filled out the night of the incident by Officer Kelly. The report documents that Officer Kelly offered to take Mr. Butler to both the Detective Division and the hospital. ~~The significance of the report is not discussed in PAC's~~ decision. This omission belies the question whether PAC was intent on a particular finding regardless of the available facts.

A more troubling allegation by PAC regards "the role that race seemed to have played in the officer's response to the events that night". PAC suggests that Officer Kelly assumed that the three black men stopped by the unknown officer were perpetrators because of their race. It is apparent that all of the individuals present were already stopped by the time Officer Kelly arrived on the scene. It is not clear what the unidentified police officer (if he was an officer) did to stop or detain any of the individuals present. Additionally, PAC points out that the radio call involving gunshots referred to three black males.

We do know that Officer Kelly arrived at the scene of a reported shooting and robbery and he attempted to make sense of a confused situation. It is arbitrary and unreasonable to conclude that Officer Kelly's actions were race motivated. This conclusion is contrary to PAC's own finding that "(b)ecause it is clear that one or more of the bar patrons had implicated Butler as a participant in an attempted armed robbery, Kelly can not be faulted for having handcuffed and detained him pending further investigation".

To boot strap their conclusion, PAC continued, "We further view the officer's failure to transport Butler out of the area, whether to the hospital, or just away from the zone of danger, as a manifestation of Officer Kelly's lack of sensitivity to the racial overtones of the incident." To reiterate, Officer Kelly's testimony and his contemporaneous report indicate that Mr. Butler refused offers of transportation to the Detective Division and the hospital. Officer Kelly did not drive Mr. Butler home but the officer did wait in the area until Mr. Butler left.

The Police Department recognizes that race is a critical factor in policing. We have also made serious efforts to formulate policies and training aimed at creating a more professional police department. However, it is unfair to accuse a police officer of racial misconduct based on such nebulous and conflicting evidence. In the past, the Police Department has been willing to use PAC's recommendations, even when we disagreed with the conclusion, as material for developing training and minimizing misunderstanding. We are not prepared to do so in the instant case. For the reasons outlined above, the Police Department can not ratify the findings and conclusions reported by PAC.

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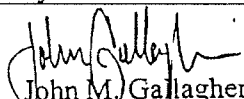
If you have any additional information not already in the Police Department's possession,  
I would ask that you make it available.

Respectfully yours,

John F. Timoney  
Police Commissioner

by:

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John M. Gallagher  
Special Advisor to  
Police Commissioner